AWARD OF INTEREST ARBITRATOR

In the Matter of Interest Arbitration between Village of Schaumburg and the Schaumburg Professional Firefighters Association, IAFF Local 4092	Opinion and Analysis, Findings of Fact, and Award by Arbitrator Peter Feuille in ILRB No. S-MA-12-190 FMCS No. 12-50148-A

Date of Award: November 2, 2012

APPEARANCES

For the Village:

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Ms. Paula Hewson, Assistant Village Manager
Mr. Dave Schumann, Fire Chief
Ms. Patty Hoppenstedt, Director of Human Resources
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For the Union:

Ms. Lisa B. Moss, Carmell, Charone, Widmer, Moss & Barr, Ltd., Attorney
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Mr. Scott Kody, Director
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I. INTRODUCTION AND BACKGROUND

The Schaumburg Professional Fire Fighters, IAFF Local 4092, (“Union”) and the Village of Schaumburg (“Village”) negotiated to generate a successor collective bargaining agreement (“CBA”) to succeed the 2008-2011 CBA that expired on April 30, 2011 (Joint Exhibit 1 (“JX 1”)). During their negotiations, which included mediation (Union Exhibit 4-Tab 5 (“UX 4-T5”)), the parties resolved many issues but were not able to reach agreement on all issues. Accordingly, they invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," “Act”). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format, and agreed that I would serve as the sole Arbitrator (Transcript, page 6 (“Tr. 6”)). In February 2012 the Illinois Labor Relations Board ("Board") appointed me as the interest arbitrator in this matter.

Additionally, the parties constructively waived the Act’s requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator’s appointment, and the parties constructively agreed to extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter. In particular, the parties agreed I would have until Friday, November 2, 2012 to issue the instant Award (Tr. 210). I am most grateful for the parties’ willingness to modify the arbitration process timelines contained in Section 14.

By mutual agreement, prior to the hearing the parties (1) identified each issue that each party would put on the arbitral agenda, and (2) exchanged their last offers of settlement on each unresolved issue with each other (JXs 2, 3). Also by mutual agreement, the parties held an arbitration hearing on June 19, 20, and 21, 2012 in Schaumburg, IL. This hearing was stenographically recorded and a transcript was produced. The parties waived oral closing arguments at the hearing and instead submitted post-hearing briefs. With the Arbitrator's final receipt of these briefs on August 29, 2012 the record in this matter was closed.

II. THE ISSUES

The record shows that at the start of the instant hearing the parties had previously exchanged their proposals or "last offers of settlement" on about 20 different issues (JXs 2, 3). Many of these issues were resolved during the arbitration hearing and thereby removed from the arbitral agenda. Accordingly, at the conclusion of the hearing on June 21, 2012 the parties submitted their "Stipulation of Issues in Dispute" (JX 4). The parties agreed that seven unresolved issues were being presented for arbitrated resolution at this time, and of these four were economic and three were non-economic issues within the meaning of Section 14 (see below). In addition, the parties agreed that four other issues would be presented to the Illinois Labor Relations Board ("ILRB") for declaratory rulings on the

mandatory/permissive subjects of bargaining status of these four issues.

JX 4 shows that the following four economic issues remain on the arbitral agenda (the party specified in parentheses indicates the party responsible for placing that issue on the arbitral agenda):

1. Term of Agreement (Section 23,1; both parties)
2. Salaries (Section 8.1; both parties)
3. Longevity Pay (Section 8.2; Village)
4. Quartermaster System and Maintenance Allowance (Section 15.4; Union)

Additionally, the parties agree that the following three non-economic issues remain on the arbitral agenda:

5. Purge of Personnel File (Section 4.11 – NEW; Union)
6. Vacation Scheduling (Section 9.3; Village)
7. Drug and Alcohol Testing (Article XXII; Village)

JX 4 also specifies that the following three issues will be the subject of a joint petition for a declaratory ruling from the ILRB on the mandatory/permissive nature of each issue:

1. No Subcontracting (NEW ARTICLE; Union)
2. Job Descriptions (Section 16.5; Union)
3. Entire Agreement (Article XXI; Union)

JX 4 additionally specifies that a fourth issue will be the subject of a petition for a declaratory ruling from the ILRB to be filed by the Union:

4. Minimum Personnel Per Shift (new Section 7.5 (i.e., old Section 7.4) and new Section 7.7; Union)

The parties agreed that I will retain jurisdiction over these four ILRB-pending issues in order to rule, if necessary, on any of them that are decided by the ILRB to be mandatory subjects of bargaining and the parties are not able to resolve directly (Tr. 490-491, 510).

Also at the conclusion of the hearing, the parties presented their "final proposals" (Union, JX 5) or "final offers" (Village, JX 6) for inclusion in the record. JXs 5 and 6 contain the parties' truly final offers, including any revisions the parties desired to make in any of their offers during the arbitration hearing. As this suggests, the parties mutually agreed to permit these last-minute modifications in their final offers. These are the parties' official "final offers" from which arbitral selection decisions will be made in the pages that follow.

III. STATUTORY DECISION CRITERIA

Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel [or the sole arbitrator, if the parties have waived the panel format], more nearly complies with the applicable factors prescribed in subsection (h)."

Section 14(h) directs that the arbitration panel [or sole arbitrator] shall base its finding, opinions and order upon the following factors, "as applicable." These factors, in their entirety, are:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.
(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

As noted, the Act does not require that all of these factors or criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the Arbitrator's responsibility to decide how each of these criteria should be weighed. As directed, we will use the applicable criteria to make decisions on the issues presented in this proceeding.

The "such other factors" referenced in Section 14(h)(8) is an open-ended and general reference to other criteria that may be applicable to the resolution of specific issues in selected arbitrations. In the instant matter, the most important decision factors under Section 14(h)(8) are the parties' "Variance Agreement" in JX 1 (p. 76), bargaining history, and arbitration history, as these factors may be highly relevant to the resolution of selected issues, particularly salaries and contract duration.

IV. ANALYSIS, OPINION, AND FINDINGS OF FACT

The Parties

Village. The Village is a general purpose, home rule municipality of about 75,000 people located in the northwest suburbs of Chicago near O'Hare Airport. About 99 percent of the Village is located in Cook County, and the remaining small percent is located in DuPage County (UX 8-T9, v). The Village Manager is the Village's chief administrative officer.

Among the services provided by the Village is fire protection and suppression through the Schaumburg Fire Department ("Department"). The Village's employees in the Department work at five fire stations located within the Village. The Fire Chief is the top official in the Department.

Union/Bargaining Unit. The Union is the exclusive bargaining representative for a bargaining unit of about 112 Department employees below the rank of Captain, including Lieutenants and Firefighters (JX 1). In addition, many

Lieutenants and Firefighters have obtained Paramedic licensure, for which they are paid a Paramedic stipend over and above their regular salary (JX 1). The Union, either as an independent organization or as Local 4092 of the IAFF, has represented this unit since 1986 (Village Exhibit 35 ("VX 35")).

The instant bargaining unit does not include any of the Department's Captains and Battalion Chiefs, who are in a separate bargaining unit exclusively represented by the Schaumburg Fire Command Association and covered by a different CBA (VX 49).

Village-Union Bargaining Relationship. The Union was certified as the exclusive representative of the rank-and-file firefighter bargaining unit in 1986 (UX 3-T1). Initially, the Union was an independent organization unaffiliated with any larger group, and known as the Schaumburg Professional Firefighter Association. In 2001 the independent Union merged with the International Association of Firefighters ("IAFF") and the Associated Firefighters of Illinois, and the Union retained its name and also became Local 4092 of the IAFF (UX 3-T1). As will be discussed in more detail below, through 2011 the parties have been connected via eight collective bargaining agreements (VX 52, JX 1).

Other Village Bargaining Units. The Village currently has a total of five labor organizations representing five different groups of Village employees, and some of these units feature prominently in the analyses that follow. In addition to the instant unit, there is the police rank-and-file unit represented by Chapter 195 of the Metropolitan Alliance of Police Schaumburg

Chapter 195 (“MAP 195”). In the instant Department, there is the fire command unit, represented by the Schaumburg Fire Command Association. Similarly, there is the police command unit represented by Chapter 219 of the Metropolitan Alliance of Police Schaumburg Chapter 219 (“MAP 219”). In addition to these four units of public safety employees, Village public works employees are represented by Local 150 of the International Union of Operating Engineers (“Local 150”). The current or most recent CBAs in the four public safety units can be found in UX 1-T1-T6.

Comparability

As noted above, the Section 14(h)(4) decision factor or criterion states that arbitrators may use comparisons of the employment terms of unit members with employment terms of similar employees in comparable communities. This criterion is customarily referred to as the “comparability” factor. Consistent with the vast majority of Section 14 interest arbitrations, both parties have submitted considerable external comparability evidence into the record. As will be seen later in this Award, this comparability evidence was extensively relied upon in support of the parties’ offers on various issues.

In particular, the Union’s external comparability group includes the following seven municipalities:

Village of Arlington Heights
City of Des Plaines
City of Elgin
Village of Elk Grove Village
Village of Hoffman Estates
Village of Mount Prospect
Village of Palatine (UX 5)

The Union argues that its comparison group is superior to the Employer's comparison group on many dimensions and therefore should be used. The Union emphasizes that all of its comparables are other municipalities with populations between plus or minus 50 percent of Schaumburg's population and are located within a 30-mile radius of Schaumburg. The Union particularly objects to the Village's inclusion of Hanover Park and Streamwood on the primary basis that these are much smaller municipalities than Schaumburg and concomitantly have much smaller fire departments as well as much lower revenues and expenditures (UX 5; Union Brief, page 13 ("Un.Br. 13")). The Union also notes that its comparability group was adopted by Arbitrator Steven Briggs in the February 1998 interest award he issued to conclude the 1997-1998 interest arbitration process between these parties that produced their 1996-1999 CBA (UX 2-T2).

The Village's external comparability group includes the following nine municipalities:

Village of Arlington Heights
City of Des Plaines
City of Elgin
Village of Elk Grove Village
Village of Hanover Park
Village of Hoffman Estates
Village of Mount Prospect
Village of Palatine
Village of Streamwood (VX 1)

The Village notes that its comparison communities are either (1) contiguous communities with Schaumburg or (2) communities with a population of at least 30,000 located within 10 miles of the Village (VX 1). The Village terms these communities a "labor market" comparison group. In addition, the Village's comparable

communities are similar to the Village on the key dimensions of median household income and median home value (VX 2). Further, the Village notes that in a September 2011 interest arbitration award between the Village and the Schaumburg Fire Command Association issued by Arbitrator Marvin Hill, Arbitrator Hill adopted the same external comparability group as presented by the Village in the instant proceeding (VX 6; UX 2-T9). Accordingly, the Village argues that its comparison group is superior to the Union's comparison group and should therefore be used.

Each party has argued that I should select and use its comparability group and not use the other party's comparison communities. I find that engaging in an analysis designed to make such a one-or-the-other choice between the two proposed comparison groups is not a productive use of anyone's time or effort. I believe that both comparison groups are reasonable. In particular, the most notable fact about the two proposed comparison groups is that they substantially overlap. The Union has presented seven comparable communities, and the Village's comparison group includes all seven of the Union's proposed comparables plus two others. Accordingly, all of the proposed comparison communities in the record will be used, as applicable, in the analyses of the unresolved issues that follow. We turn to those issues.

1. Term of Agreement (Section 23.1)

The expiring CBA was for a three-year term covering the period May 1, 2008 through April 30, 2011 (JX 1). As noted

above, this expired CBA was the eighth CBA between these parties (VX 35).

Union Proposal. The Union proposes that the successor CBA have a four-year duration, from May 1, 2011 through April 30, 2015 (JX 5). The Union supports its proposal with a variety of evidence and arguments. First, the Union notes that its duration offer is the only offer that offers the parties a significant respite from the lengthy processes of bargaining and interest arbitration.

Specifically, the Union's four-year duration offer allows the parties the opportunity to step away from the bargaining table and assess the impact of this Award, and then negotiate their next CBA on a more informed basis. Expressed another way, the Union's proposed longer duration would produce more stability in the parties' bargaining relationship than the Village's proposal of a three-year contract duration that will require the resumption of bargaining for the next contract in about 18 months. The Union points out that the expiring CBA was executed on May 14, 2010 (JX 1, p. 64), and the first bargaining session for the successor CBA was held on April 7, 2011 (UX 4-T5), less than a year later. The Union says it is in both parties' interests to have a longer time away from the negotiation, mediation, and arbitration tables after the conclusion of the new CBA to be produced in the instant proceeding.

Second, the Union also points out that the external comparability evidence supports its duration offer. Examining the duration of the CBAs in effect in its seven comparable

communities, the Union points out that two municipalities (Elgin and Elk Grove Village) have five-year CBAs, one community (Mount Prospect) has a four-year CBA, and four communities Arlington Heights, Des Plaines, Hoffman Estates, and Palatine) have three-year CBAs, all of which produce an average contract duration of 3.71 years (UX 6-T31), which is closer to four years than three years. In short, the Union says the external comparability evidence provides more support for the Union's contract duration offer than for the Village's duration offer.

For these reasons, the Union asks that its four-year contract term final offer be selected.

Village Proposal. The Village proposes that the successor CBA have a three-year duration, from May 1, 2011 through April 30, 2014 (JX 6). The Village supports its proposal with a variety of evidence and arguments. First, the Village argues these parties have a 27-year history of negotiating multi-year CBAs (VX 35). During that time period the parties have negotiated eight such contracts. One of them, covering the 1989-1993 period, was for a four-year term (VX 35). The other seven CBAs were for three-year terms, including an unbroken string of six three-year contracts covering the period 1993 to 2011 (VX 35). The Village says the parties' bargaining history evidence under Section 14(h)(8) overwhelmingly supports the selection of its contract term offer.

Looking at the internal comparables, the Village notes that it deals with labor organizations representing a total of five bargaining units: the instant unit, the fire command officers

unit, the police rank-and-file unit, the police command officers unit, and the public works unit (VX 36). Currently, the instant unit is coming off a three-year contract, and three-year contracts are in effect in the fire command unit and in the public works unit (VX 36). Members of the police command unit are coming off a recently-expired (on April 30, 2012) two-year contract (VX 36). There is currently a five-year contract in effect in the police rank-and-file unit (VX 36). The Village says that its internal comparability evidence provides significantly more support for a three-year contract term than the four-year term proposed by the Union, and asks that its three-year contract term offer be accepted.

Alternative Contract Term Final Offers. By mutual agreement, each party also submitted an alternative, or contingent, final offer on the contract duration and salary issues. Specifically, the Union presented a three-year salary offer in case the Village's three-year contract duration offer is selected. Likewise, the Village presented a four-year salary offer in case the Union's four-year contract duration offer is selected. We will examine the salary portions of these alternative final offers more fully when we conduct our analysis of the salary issue.

Analysis. When we examine the combined evidence and the arguments of the parties, the results establish that the most appropriate contract term is for three years covering the period May 1, 2011 through April 30, 2014, as proposed by the Village.

By far the strongest support for this selection decision comes from the parties' own bargaining history (VX 35; UX 6-T31). This Section 14(h)(8) historical evidence indicates that seven of the eight contracts in this unit have had three-year terms, including an unbroken run of six three-year contracts covering the period 1993 to 2011 (VX 35). As this evidence indicates, during this period the parties have expressed a clear mutual preference for three-year contracts over durations of other lengths. Expressed another way, over time the parties' actions at the negotiating table provide almost no support for the Union's proposed four-year contract duration.

The Union's proposed four-year term also is not persuasively supported by the Union's external comparability evidence under Section 14(h)(4), nor by the Union's respite-from-bargaining rationale. Of the Union's seven comparable communities, four have contracts with three-year terms (UX 6-T31). In other words, a majority of the Union's comparables have three-year contract terms (UX 6-T31). Three Union comparables have negotiated longer-term contracts (either four or five years), but this 3.7-year average duration among the Union's comparables does not hide the fact that the majority of the Union's comparison communities have three-year contracts.

Looking at the Union's bargaining respite rationale, I note that the evidence indicates that the parties routinely need many months after the stated expiration date of a particular CBA before a new contract is negotiated or arbitrated and put into effect in this unit. For instance, the parties were covered by a

three-year contract during the period May 1, 1993 through April 31, 1996 (VX 35; UX 2-T2). They were not able to reach agreement on the terms of a successor contact, so they proceeded to interest arbitration. The interest award in that impasse was issued by Arbitrator Steven Briggs on February 23, 1998 (UX 2-T2), almost 22 months after the 1993-1996 CBA expired (VX 35; UX 2-T2).

For another example, the parties were covered by a three-year contract during the period May 1, 1999 through April 30, 2002 (VX 35). They were not able to reach agreement on all the issues for a successor contract, so they went to interest arbitration. The interest award in that impasse was issued by Arbitrator Robert McCallister on January 28, 2004, about 19 months after the 1999-2002 contract expired (UX 2-T5, p. 25).

A third example comes from the negotiations and mediation that followed the 2005-2008 contract. This contract expired on April 30, 2008, and the parties initially were not able to negotiate a successor contract, so they invoked interest arbitration and selected Arbitrator Stephen Goldberg as the arbitrator. Arbitrator Goldberg was able to mediate a settlement during January 2010 that included a new three-year contract (Tr. 386), which was executed on May 14, 2010, two years after the 2005-2008 CBA expired (JX 1, p. 64).

This impasse resolution history evidence indicates that in the Village's rank-and-file firefighter bargaining unit, the parties routinely take many months after the old contract has expired to reach a new contract, whether negotiated or

arbitrated. This bargaining and arbitration history evidence contains no instances of these parties deciding (by negotiated agreement or by arbitral ruling) that they needed a respite from bargaining as a result of the amount of time needed to obtain a successor contract. Similarly, it is not at all clear why the parties need a respite from bargaining at this juncture in their bargaining history.

As a result of this impasse resolution history, there is nothing the least bit unusual in the fact that the instant award is being issued in early November 2012, about 18 months after the prior contract expired at the end of April 2011 (JX 1). In fact, the evidence indicates that this time lapse is normal in this unit's bargaining and interest arbitration history. In turn, this bargaining and impasse resolution history evidence substantially undermines the Union's argument that the parties need some sort of "respite" from bargaining to introduce more stability into their labor-management relationship. There is no evidence that the parties' bargaining relationship is somehow unstable, and the fact that the parties routinely need at least one and one-half years from the expiration date of the expiring contract to obtain a successor contract does not, by itself, constitute evidence of bargaining instability.

Taken together, the contract term evidence strongly favors the selection of the Village's proposed three-year contract term, effective May 1, 2011 through April 30, 2014.

Finding. For the reasons explained above, I find that the Village's three-year contract duration final offer more nearly

complies with the applicable Section 14(h) decision factors than does the Union's four-year contract duration final offer. Accordingly, I select the Village's final offer to resolve the contract term or contract duration issue.

2. Salaries (Section 8.1)

During the 2008-2011 CBA that has expired, unit members received a 3.5 percent raise effective May 1, 2008; another 3.5 percent raise effective May 1, 2009; and no raise effective May 1, 2010 (or at any time during the 2010-2011 year) in return for a no-layoff guarantee during the 2010-2011 year and also a "Variance Agreement" (JX 1, Section 8.1, Appendix E).

Union Proposal. The Union proposes that salaries be increased in each year of its proposed four-year contract term (JX 5). The Union's proposal calls for the 2010-2011 salary rates in Article VIII to be increased as follows:

Effective May 1, 2011	4.0 percent
Effective May 1, 2012	4.0 percent
Effective May 1, 2013	6.08 percent (2.0 percent plus 4.08 percent parity adjustment)
Effective May 1, 2014	2.5 percent

The Union's alternate salary proposal specifies that if the Village's three-year contract term is selected, then the Union's salary offer will be the same as proposed above for the first three years (i.e., the 4.0 percent increase effective May 1, 2011; the 4.0 percent increase effective May 1, 2012; and the 6.08 percent increase effective May 1, 2013 (JX 5)). Both the Union's primary and alternate salary offers are designed to

restore pay parity with the Village rank-and-file police unit represented by MAP 195.

The Union's salary offer also includes terminology in Section 8.1 mandating that the salary offers effective on May 2011 and on May 2012 will be retroactive to those dates, and also specifying who will be eligible for the retroactive payments (JX 5).

The Union presents considerable evidence in support of its salary proposal. First and foremost, the Union emphasizes that for 24 years there existed a dollar parity relationship between top step salaries in the rank-and-file police unit and fire unit. When the Union agreed to a zero percent increase and a no-layoff provision for the 2010-2011 year, the police unit was covered by a CBA that provided a four percent increase in that same year (UX 1-T2). Since that year, the instant parties have been negotiating and arbitrating new salary levels starting with the 2011-2012 year. In the meantime, the police CBA has continued in effect and has provided a significant pay increase to rank-and-file police officers on May 1, 2011 and May 1, 2012 (UX 1-T2). The Union's salary goal is nothing less than a complete and up-to-date restoration of this police-fire pay parity relationship, as called for in the parties' Variance Agreement (JX 1, App. E, p. 76), which will be examined in detail below.

In addition to this emphasis on internal comparability, the Union also emphasizes that through the 2009 year its unit members were among the very highest paid employees among the communities in its comparability group (UX 6-T1-T13). This is no longer the

case, and the Union's salary offer seeks to restore Schaumburg firefighters and paramedics to their formerly high pay standing among their comparable peers. The Union says that the selection of its salary offer will accomplish that objective, but the selection of the Village's salary offer will cause unit members to continue to slide in the salary comparison standings with their comparable peers (UX 6-T1-T13). The Union emphasizes that the selection of its offer will restore unit members to their 2009 pay rankings, but the Village's offer will entrench unit members at or near the bottom of the range of salaries paid to their comparable peers.

In response to the Village's claims that the Village has gone through some very tough economic circumstances, the Union says that the evidence shows that the Village is a very wealthy community with a very large General Fund balance approaching $30 million, an actual General Fund surplus of $7.4 million on April 30, 2011, and a predicted General Fund surplus of $11.4 surplus on April 30, 2012 (UX 8-T9; 8/23/2012 chart). The Union does not deny that during the 2008-2010 period the Village experienced significant revenue declines. However, the more recent financial evidence shows that the Village fiscal posture turned around significantly during the 2010-2012 period via strongly increased revenues and significantly trimmed expenditures, and the Village now is in very strong financial shape. In turn, the Union says that the Village's claim of a curtailed ability to pay is very outdated, and the Village can easily afford to fund the Union's salary offer.

Looking at increases in the cost of living as measured by increases in the federal government's Consumer Price Index ("CPI") for the Chicago area, the Union says CPI increases during the April 2009 through April 2012 period total 6.8 percent (UX 6-T30). The Union says this cost of living data indicates that the Village's salary offer is inadequate to keep up with increases in the cost of living, but the Union's salary offer will adequately cover recent and future COL increases.

For these reasons, the Union asks that its salary offer be selected.

Village Proposal. The Village proposes that bargaining unit salaries be increased by two percent during each year of its proposed three-year successor contract (a two percent increase effective on May 1, 2011; a two percent increase on May 1, 2012; and a two percent increase on May 1, 2013; JX 6). If the Union's four-year contract term is selected, the Village's alternate four-year salary proposal offers the same two percent increases in May 2011, May 2012, and May 2013, as specified in its three-year salary offer, plus a wage reopener for the fourth contract year (May 1, 2014 – April 30, 2015; JX 6).

The Village's salary offer also includes terminology in Section 8.1 mandating that the salary offers effective on May 2011 and on May 2012 will be retroactive to those dates, and also specifying who will be eligible for the retroactive payments (JX 6).

The Village presents considerable evidence in support of its salary offer. The Village begins with a strong critique of the

Union's measurement of the cost differences between the parties' salary proposals. The Village says that its calculations show that the cost of the Union's three-year salary proposal for the 2011-2014 years is $2,554,884, which is a 14.736 percent increase over this period when measured against the base salary cost of $9,499,078 in effect during the last year of the expiring contract (Village Brief, page 27 ("V.Br. 27")), not the 9.07 cost percent increase the Union has claimed (UX 6-T27; Tr. 137). The Village says that when it uses the same costing method to measure its own offer, the cost of the Village's final offer is $1,155,165 (V.Br. 27-29). This is a $1.4 million dollar salary Union-Village cost difference for these three contract years (V.Br. 28).

Turning to pay relationships across Village bargaining units, the Village says that the pay relationship between the instant unit and the fire command unit is much more important than the police-fire pay parity relationship. The Village emphasizes that during the 24-year period 1986-1987 through 2010-2011, percentage pay increases across the two fire groups have been identical (VX 50). The fire command unit received a two percent increase on May 1, 2011, received another two percent increase on May 1, 2012, and is scheduled to receive another two percent increase on May 1, 2013 (VX 50). The Village's salary offer will provide fire rank-and-file employees with the same two percent increases on those same dates, thereby preserving the intradepartmental percentage pay increase parity relationship across the Village's two fire units. One very important result

of this maintenance of the intradepartmental percentage pay parity relationship is that only the Village's salary offer will preserve the historic 11.25 percentage point pay difference in annual top step salaries paid to fire lieutenants in the instant unit and top step captains in the fire command unit (JX 1; UX 1-T6, UX 32; VX 49; V.Br. 32-33).

The Village insists that the relationship between the salaries paid in the Village's two fire units is more important than the relationship between fire and police salaries. As Arbitrator Marvin Hill stated in his award in the 2011 Schaumburg fire command interest arbitration case "it makes much more sense to compare raises between rank-and-file firefighters and Fire Command than Fire Command and Police Command" (*Village of Schaumburg and Schaumburg Fire Command Association*, Arb. Marvin Hill, September 19, 2011, p. 26; VX 6). The Village notes that firefighters and fire command staff work in the same department and share the same fire suppression and protection mission, a description that does not apply when comparing firefighters and police officers. Accordingly, the two percent salary increases in the fire command unit deserve significantly more weight than the much larger increases called for in the Union's offer.

Looking at external comparability, the Village says that unit members are comparatively well paid and will continue to be well paid if the Village's salary offer is adopted (VXs 52, 53). The Village does not dispute that the unit's comparative salary standing has dropped from what it was in prior years. However, the Village says that in the recent and current fiscal climate

the Village's historical salary ranking does not deserve much weight. The Village cites Arbitrator Briggs' award in *Village of Skokie and Illinois FOP Labor Council,* ILRB No. S-MA-08-139 (Arb. Steven Briggs, August 24, 2010) in support of its contention. Quoting Briggs: "I am not convinced from the record that the historical salary rankings of Skokie top step police officers should be given much weight in these difficult fiscal times. . . . It is therefore preferable to analyze the general trends (such as multiple jurisdiction salary freezes) and draw appropriate conclusions from them" (*Id.,* at 15-16).

The Village says the best way to analyze general trends is to compare the percentage pay increases in the parties' salary offers with the percentage pay increases being provided by the external comparables for the three years in question. The Village performed such an analysis and calculated that the average percentage increase across the Village's nine comparables was 1.63 percent in 2011, 1.70 percent across the Village's five comparables for which 2012 data are available, and 2.5 percent across the two Village comparables for which 2013 data are available (V.Br. 41). The Village argues that this method of assessing proposed salary increases provides much more support for the Village's salary offer than for the Union's salary offer.

Turning to cost of living ("COL") increases, the Village emphasizes that the recent Consumer Price Index data strongly support the selection of its offer. Looking at the changes in CPI-U and CPI-W for the Chicago metropolitan area during the May 2011 through May 2012 period, the first year the new contract

will be in effect, the data show a CPI-U increase of 1.00 percent and a CPI-W increase of 0.68 percent in the Chicago metro area for that period (VXs 19, 21, V.Br. 47). The Village's salary offer of a two percent increase significantly exceeds the 2011-2012 increase in the local metro area cost of living regardless of which CPI measure is used.

Turning to the inability to pay dimension, the Village does not argue a pure inability to pay position, but it does insist that the "interest and welfare of the public and the financial ability of the unit of government to meet those costs" under Section 14(h)(3) must be given significant weight in this proceeding. The Village points out that during the past 3-4 years interest arbitrators in Illinois have repeatedly cited the impact of the sorry state of the economy on arbitrated wage decisions (V.Br. 50-52). In particular, the Village points to the comments of Arbitrator Hill in his 2011 fire command interest arbitration:

> "While counsel [for the Village] is not advancing an inability-to-pay argument, its focus in the current state of the economy and the termed "economic crisis" is valid. True, the Village ranks relatively high regarding revenues when compared to the relevant benchmark jurisdictions use for external analysis. However, few if any neutrals who conduct interest arbitrations and read the financial pages would rule that a city cannot be cautious in this up and down, roller-coaster economy.
>
> Overall, the City's financial picture mirrors the national economic situation which, in turn, favors the Administration's final offer" (VX 6, p. 30).

The Village argues that Hill's conclusions also apply in the instant case.

Analysis. As the parties are aware, Section 14 of the Illinois Public Labor Relations Act requires that interest arbitration selection decisions on economic issues be made on a final offer arbitration ("FOA") basis, meaning the arbitrator must select one or the other of the parties' final offers unchanged. The primary purpose underlying the FOA concept is to provide negotiating parties an increased incentive to moderate their final offers to the point where they can find shelter in their own negotiated settlements and thereby avoid the risk of receiving a very unfavorable arbitration award. If a settlement is not possible, FOA's secondary purpose is to give each party an incentive to submit a reasonable final offer and thereby make it more likely that its offer will be selected.

When we compare the substance of the two salary offers before us, we see that the FOA concept had little or no apparent impact on these parties when they formulated their salary final offers. The Village has offered a three-year salary increase totaling six percent (not compounded), or two percent per year. In comparison, the Union has offered a three-year salary increase totaling 14.08 percent across three years, which is an average increase of 4.69 percent per year (also not compounded). In short, the Village has submitted a low offer, and the Union has submitted a high offer, and there is a very large gap between these two offers. I find that both offers are deficient pursuant to Section 14(h), and if I had the statutory decision authority of an interest arbitrator under a conventional arbitration regime, I would not select either of these final salary offers.

However, I am required by Section 14(g) to select one or the other of these two final salary offers that "more nearly complies with the applicable factors" in Section 14(h), and it is to that task that we now turn.

Pursuant to Section 14(h)(8), we begin our analysis with the parties' *Variance Agreement*, which is one of the key elements driving their salary dispute. This Variance Agreement, contained in Appendix E of JX 1 (p. 76), is reproduced here:

VARIANCE AGREEMENT

"Whereas Local 4092 recognizes the current state of the economy and its impact on the Village's current finances and desires to accommodate this circumstance, the Union agrees to accept a zero percentage increase for the May 1, 2010 to April 30, 2011 fiscal year subject to the following conditions:

1. The Agreement shall be non-precedential and without prejudice to the Union's ability to seek in negotiations for successor contracts the restoration of bargaining unit salaries to levels that are comparable to the historical relationships that have existed between the firefighters' bargaining unit and the police officers' bargaining unit and between the firefighters' bargaining unit and the Fire Command bargaining unit, as well as among the external comparables.

2. The Agreement shall not add to the Union's burden in seeking to 'catch up' to such comparables in future negotiations" (JX 1, p. 76).

The Village says that the police-fire pay parity relationship was "voluntarily broken in the last round of negotiations between" the instant parties, and in so doing, the parties' agreement on a zero percent wage increase for the 2010-2011 year "effectively and voluntarily ended" their parity relationship (V.Br. 4). The Village emphasizes that the Variance Agreement does nothing more than give the Union the right to seek

to restore unit salaries to levels that are comparable to the historical relationships that existed with rank-and-file police officers, with fire command staff, and among the external comparables.

Looking specifically at the police-fire pay parity relationship, the Village does not dispute that police-fire pay parity existed for many years across these two units. More importantly, though, the Village argues that "with parity between the police and fire bargaining units no longer a fact of life, the parity relationship between the IAFF bargaining unit and the Fire Command Association bargaining relationship must of necessity be given controlling weight in this case" (V.Br. 58).

The Union has a vigorously different view of the Variance Agreement. The Union says the Variance Agreement is expressly non-precedential. As a result, the Union argues that the Village may not rely upon the Union's willingness to accept a conditional wage freeze in 2010-2011 for any purpose in the instant proceeding. Further, the Union says that in the Variance Agreement the Union specifically preserved its pay parity relationship. In exchange for the 2010-2011 zero increase, the Union protected its right to regain internal parity as well as its standing among the external comparables, without any additional burden.

The Union argues as follows:

". . . based on the clear language of Appendix E, to award the Village's proposal in this case would be tantamount to voiding from Appendix E the benefit of and consideration for the

Union's willingness to accept a 0% increase in 2010, thereby authorizing a breach of the parties' Variance Agreement. In the words of Arbitrator Perkovich, in *City of Rockford*, in deciding to grant the Union's proposed wage increase including a catch-up, the parties agreement to allow the Union to seek a catch-up controls" (Un.Br. 23).

The Union's reference to Arbitrator Perkovich comes from his award in *City of Rockford and IAFF Local 413* (ILRB No. S-MA-11-039, Arb. Robert Perkovich, June 27, 2010). In that case, Perkovich was dealing with the following situation. The parties had mediated a settlement of their 2009-2011 CBA. In each of the 2009 and 2010 years Local 413 agreed to a wage freeze. The language governing their 2011 wage reopener said, in relevant part, that the Rockford union "shall not be subject to the ordinary interest arbitration burden to justify a catch-up and the arbitrator shall not be restrained by the arbitral precedent disfavoring wage catch-ups" (*Id.* at 2). Perkovich awarded the union's reopener wage offer, saying "I believe the parties' own mediated agreement controls" (*Id.* at 5). In light of the quoted language in the Rockford mediated agreement, it is not surprising that Arbitrator Perkovich selected the Union's wage offer.

I believe Arbitrator Perkovich correctly concluded that the reopener language in the Rockford mediated settlement "controls," and that he correctly interpreted the substance of that reopener language. More important for our purposes, however, I find that the Perkovich award in Rockford is of very little consequence in the instant proceeding. I note that the instant Variance

Agreement says it will be non-precedential and without prejudice to the Union's [IAFF Local 4092's] ability to "seek in negotiations for successor contracts the restoration of bargaining unit salaries to levels that existed between the firefighters' bargaining unit and the police officers' bargaining unit and between the firefighters' bargaining unit . . . " and the fire command unit and among the existing comparables (JX 1, p. 76). On the Union's burden dimension, the Variance Agreement says that it "shall not add to the Union's burden in seeking to 'catch up' to such comparables in future negotiations" (JX 1).

On that same dimension, in contrast, the Rockford settlement agreement eliminated that union's "ordinary interest arbitration burden" and instructed the interest arbitrator, if one was involved in resolving that matter, to ignore the arbitral precedent disfavoring catch-ups (Un.Br. 19-20, citing *City of Rockford and IAFF Local 413*). This Rockford language established a clearly tilted playing field in the Rockford union's favor, and its language goes well beyond anything in these parties' Variance Agreement in establishing a similarly tilted playing field in Local 4092's favor. Accordingly, the Union's reliance in the instant proceeding on the Perkovich analysis and ruling in his Rockford award in is of limited value.

The Union also is highly critical of the language used by Arbitrators Edward Krinsky and Marvin Hill in recent Village awards issued in the two Village public safety command units. In *Village of Schaumburg and Metropolitan Alliance of Police #219 Schaumburg Command Officers* (Arb. Edward B. Krinsky, April 28,

2011), Krinsky noted that the fire rank-and-file unit received a zero increase for 2010 in return for a *quid pro quo* of no layoffs (UX 2-T8 at 16). The Union emphasizes that Krinsky failed to note that the Union's wage freeze was conditional and that pay parity with the police rank-and-file unit was expressly preserved (Un.Br. 21-22).

Similarly, the Union is even more critical of Arbitrator Marvin Hill's analysis and conclusions in *Village of Schaumburg and Schaumburg Fire Command Association* (Arb. Marvin Hill, September 19, 2011). In this award Hill stated "the parties do not dispute that the so-called 'parity relationship' between the rank-and-file police and firefighters was voluntarily broken in the last round of negotiations between the Village and the IAFF bargaining unit. . . . As correctly noted by management (Brief at 4), 'this agreement effectively and voluntarily ended the parity relationship between the rank-and-file fire and police units.' . . . The fact that the Firefighters *voluntarily* took a zero percentage increase is not insignificant in the instant proceeding" (Hill 2011 Award, UX 2-T9 at 3, note 1, emphasis in original). The Union says that Arbitrator Hill is inaccurate, that he did not examine the evidence regarding the Variance Agreement, and Hill's comment that "it makes more sense to compare raises between rank-and-file Firefighters and Fire Command than between Fire Command and Police Command" (UX 2-T9 at 26), according to the Union, "is of no consequence concerning wages" (Un.Br. 22-23).

I am not persuaded by the Union's insistence that because Arbitrators Krinsky and Hill did not make any reference to the Variance Agreement when they wrote in their 2011 police command and fire command awards, respectively, that the police-fire pay parity relationship no longer existed in the Village, that Krinsky and Hill somehow misstated what occurred with the instant parties 2010-2011 zero increase (or wage freeze). Whatever language is used, it is clear that the instant parties' agreed to (select the descriptor of choice) break, depart from, suspend, put on hold, place in limbo, etc., etc. the police-fire parity relationship during the 2010-2011 year. I also note that the prior contract expired on April 30, 2011, and the parties have been working toward a successor contract to take effect on May 1, 2011. As a result, during the pendency of the negotiations and interest arbitration for their successor contract, the police-fire parity relationship has not been in effect. These facts are not at all consistent with the Union's claim that police-fire pay parity was "expressly preserved."

I fully agree with the Union that in the Variance Agreement the Union expressly preserved the right to seek restoration of the police-fire pay parity relationship (along with other enumerated pay relationships). In addition, the Union also obtained language that its ability to seek the restoration of these salary relationships "shall not add to the Union's burden in seeking to 'catch up' to such comparables." Accordingly, in this proceeding the Union faces the ordinary interest arbitration burden faced by every party proposing its preferred wage increase

in interest arbitration: the burden of persuading the arbitrator with its evidence and arguments that its wage offer should be selected instead of the other party's wage offer.

As this Variance Agreement language indicates, the Union expressly preserved *the right to seek restoration* of the police-fire pay parity relationship. Contrary to the Union's contention, the Variance Agreement does not contain language that "expressly preserves" pay parity with the rank-and-file police unit.

Similarly, I reject the Union's assessment that "based on the clear language of Appendix E, to award the Village's proposal in this case would be tantamount to voiding from Appendix E the benefit of and consideration for the Union's willingness to accept a 0% increase in 2010, thereby authorizing a breach of the parties' Variance Agreement." In this sentence, the Union seems to argue that its unit members are owed the restoration of the police-fire pay parity relationship in return for agreeing to the zero increase during the 2010-2011 year, and anything less than that constitutes a "a breach" of the Variance Agreement. However, the language of the Variance Agreement does not support such a conclusion, for this Agreement contains no guarantee that police-fire pay parity will be restored.

I also note that the Union reacted vigorously to the Village counsel's comment at the instant hearing that the Village's current five-year CBA with the police rank-and-file unit was a "mistake" (Tr. 281, 283). The Union went on to argue that this Village comment "is nothing more than an attempt to avoid paying

the Firefighters those same wage increases [negotiated with MAP 195 for the police rank-and-file unit] to which they are entitled given the history of internal parity" (Un.Br. 30). There can be no doubting the strength of the Union's desire to restore pay parity with the police. However, there is no language in the Variance Agreement that somehow guarantees the Union that it is entitled to the parity-based wage increases it seeks. The Union's wage offer may be selected, and if this happens it will be because the Union advances more favorable evidence and arguments in support of its wage offer than the Village does in support of its wage offer.

If the parties mutually intended in the Variance Agreement that the police-fire pay parity relationship was guaranteed to be restored, it would have been a straightforward matter to include language that provided for such automatic restoration (sometimes referred to as a "snapback agreement"). It is noteworthy that the Agreement contains no such language. Instead, the plain language of the Variance Agreement guarantees the Union only the right to seek to restore that pay parity relationship (and other pay relationships).

Let's pull together the important factors in and surrounding the Variance Agreement. First, the 2010-2011 zero salary increase was voluntarily negotiated at the table by the parties, not imposed by an arbitrator. Second, the Union received consideration for this zero increase, including a no-layoff clause for the period March 9, 2010 and April 30, 2011 (in Section 8.1 of the CBA (JX 1)), and the Variance Agreement, which

gave the Union the express right to seek restoration of police-fire pay parity. Third, at the time the Union entered into this zero salary increase agreement in January 2010, the police rank-and-file CBA covering the period 2008-2013 was already in place, so the Union knowingly agreed to this zero increase effective May 1, 2010 when the police rank-and-file unit was scheduled to receive a four percent increase on May 1, 2010 (UX 1-T2, App. A).

As this portion of our analysis indicates, the Variance Agreement provides very little support for the Union's salary offer.

Looking next at the *comparability* evidence under Section 14(h)(4), we examine the *internal comparables*.

The parties' salary dispute is driven overwhelmingly by the long history of police-fire dollar pay parity that existed for many years in the Village. This parity relationship was put in limbo in 2010-2011 when the parties agreed in the Goldberg mediation to a zero increase that year in return for a one-year no-layoff provision plus language in Appendix E or the Variance Agreement (those labels are used interchangeably) that the Union would not face any additional burden when seeking to restore parity with the police and with other enumerated groups (JX 1). The Union's salary offer is designed to bring unit members' salaries up to the same dollar levels paid to rank-and-file police officers by the 2013-2014 year, and the Village's salary offer is designed to accomplish very different objectives.

Under the Section 14(h)(4) decision factor of "comparison of the wages, hours and conditions of employment of the employees

involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services . . . ," I believe that when it comes to comparing unit members with comparable employees, there is a much better comparison with members of the fire command unit than with police officers. Village fire command officers work with firefighters in delivering the same fire protection and fire suppression services to Schaumburg citizens, and the fire command officers formerly worked as firefighters prior to being promoted to their command positions. Firefighter/paramedics also deliver emergency medical services. In contrast, police officers perform law enforcement and order maintenance duties, and these police duties bear little resemblance to the duties performed by firefighter/paramedics.

Looking at the pay relationship between top step lieutenants (the highest rank in the instant unit) and top step captains (the lowest rank in the fire command unit), the evidence indicates that during the 2005-2006 through 2010-2011 years the percentage pay differential between these two ranks remained steady at 11.25 percent more for captains (V.Br. 32-33). The selection of the Village's offer will continue this same 11.25 percentage pay differential in favor of captains through the 2013-2014 year (V.Br. 32-33). However, the selection of the Union's offer will result in the steady diminution of this differential such that during the 2013-2014 year it will be only 2.90 percent (V.Br. 33). There is no evidence in the record to justify pushing top step lieutenant pay so high that it almost matches top step

captain pay. Expressed another way, there is no persuasive evidence in the record that justifies the substantial distortion of the pay relationship between lieutenants and captains as the price for restoring pay parity between rank-and-file firefighters and police officers.

Accordingly, the police-fire pay parity relationship is a very important element in this salary dispute, but it is not the controlling element. As Arbitrator Hill noted, another internal comparability dimension has come to the front of the stage: the pay relationship between the instant unit and the fire command unit. The evidence in the record shows that the percentage pay increases for rank-and-file firefighters and members of the fire command have been equal each year during the 1986-1987 - 2010-2011 period (VX 50). In addition, the evidence shows that the fire command unit received or will receive the same two percent salary increases in 2011, 2012, and 2013 that the Village has proposed for this unit (UX 1-T5-T6).

Accordingly, the internal comparability evidence provides more support for the Village's offer than for the Union's offer.

Turning to the *external comparables* under Section 14(h)(4), we first look at *annual dollar pay rates*. We will omit Hanover Park and Streamwood from this portion of our analysis because their top step annual salaries are several thousand dollars below all of the other comparables (VX 52). In this analysis we will focus on top step firefighter/paramedic salaries, as this is the salary step at which a heavy majority of the unit members are located (the Village calculates that, as of May 1, 2011, 81

percent of the unit members in those two classifications are at the top salary step (V.Br. 37)). This evidence shows (1) Schaumburg firefighter/paramedics continue to be well paid compared with their comparable peers, but (2) Schaumburg unit members have slipped in these external comparisons during the pendency of this proceeding.

For instance, the Union points out, among the Union's comparables, the top step firefighter/paramedic salary in this unit ranked in second place at almost all experience levels during 2009 (UX 6-T2, T13; Un.Br. 33). However, if the Village's salary offer is selected, during 2011 and 2012 unit members will rank either in the middle or near the bottom of the salary ranking among the communities for which 2011 and 2012 salary data are available (Un.Br. 33; UX 6-T3, T5, T7, T9, T13). In contrast, only the selection of the Union's salary offer will allow unit members to climb back to the first or second place salary rankings among their peers that they enjoyed through 2009.

The external dollar salary analyses show that unit members will be paid fairly well if the Village's offer is selected, and they will be paid extremely well if the Union's offer is selected. For instance, during the 2013-2014 year, firefighter/paramedic top step pay without longevity if the Village's offer is selected will be $87,665, and it will be $94,782 if the Union's offer is selected. For the 2013-2014 year, there are only two firefighter-paramedic salaries (without longevity) in the record from among the seven comparables being used in this part of our analysis: Arlington Heights at $91,482,

and Palatine at $87,577 (UX 6-T13). It is possible that one or two other comparables may pay higher (than Arlington Heights) firefighter/paramedic salaries during 2013-2014 (Hoffman Estates is the likeliest candidate, with Des Plaines and Mt. Prospect as possibilities; UX 6-T13). However, it is extremely unlikely that any comparable community will be paying as much as or more than $94,782 during 2013-2014 in light of the size of the salary increases necessary for any other comparable community to pay a higher firefighter/paramedic top step salary than the $94,782 called for if the Union's offer is selected. As this indicates, the selection of the Union's offer means that the members of this unit will very likely be the salary kings among their comparable firefighter/paramedic peers during 2013-2014 if the Union's offer is selected.

This unit's lofty pay standing if the Union's offer is selected can be better seen by comparing its top step firefighter/paramedic salary (without longevity) in 2009-2010 with the same salary in 2013-2014 in relation to Arlington Heights and Palatine. During 2009-2010, Arlington Heights' top step pay was $83,081, and it ranked first among the Union's eight municipalities (UX 6-T13). Schaumburg's top step pay was $82,608, and it ranked in second place in this group, or $473 below Arlington Heights. During 2013-2014, if the Union's offer is selected, top step pay in Schaumburg will be $94,782, and in Arlington Heights it will be $91,482 (Arlington Heights currently is the highest paid of the seven applicable comparables during 2013-2014, but we do not yet have 2013-2014 salary data for five

of these municipalities). The selection of the Union's offer means that Schaumburg unit members at the top step will be paid $3,300 more than their peers in Arlington Heights, whom they trailed by $473 in 2009-2010 (UX 6-T13).

A second comparison comes from Palatine. During 2009-2010, top step firefighter/paramedics in Palatine were paid $81,700, or $908 less than their Schaumburg peers (UX 6-T13). During 2013-2014, Palatine top step unit members will be paid $87,577, or $7,205 less than their Schaumburg peers if the Union's offer is selected.

So, the selection of the Union's offer will not just increase the Schaumburg salary ranking among the Union's external comparables, the Union's offer will make Schaumburg top step firefighter/paramedics significantly better paid than all or almost all of their comparable peers compared to 2009-2010 (UX 6-T13).

On this same dollar salary dimension, we turn our attention to the situation that would exist if the Village's salary offer is selected. As noted above, during 2009-2010 the Schaumburg firefighter/paramedic top step pay (without longevity) ranked second among the Union's comparables, trailing only Arlington Heights by less than $500 per year (UX 6-T13). However, by 2013-2014 the selection of the Village's offer will generate a top step salary of $87,665. Although we have only two 2013-2014 top step salaries from the Union's comparable communities, we have good information about top step salaries in the remaining comparables during 2011-2012 and 2012-2013 (UX 6-T13). That

information indicates that when the salary increase dust settles across the Union's comparables, the $87,665 Schaumburg 2013-2014 top step salary almost certainly will trail top step salaries in Arlington Heights, Des Plaines, Hoffman Estates, Mount Prospect, and possibly Elk Grove Village (UX 6-T13). The Village's top step salary that year will be higher than top step salaries in Palatine and possibly Elgin (UX 6-T13). In other words, the selection of the Village's offer will cause unit members' top step salary ranking to decline from second place during 2009-2010 to either fifth or sixth (or possibly even seventh) place during 2013-2014.

What this portion of our analysis shows is that (1) the Union's offer will increase unit members' top step pay to a level that will be higher than all or almost all of their peers, while (2) the Village's offer will significantly reduce unit members' top step pay ranking compared to what it was during 2009-2010. I stated above that I found both salary offers to be deficient, and if I had the statutory authority I would not select either offer. The analysis in this annual dollar salary subsection conveys the primary reason for those views.

Turning to the comparison of *percentage pay increases* in comparable communities during the relevant contract years in this proceeding pursuant to Section 14(h)(4), the evidence shows that recent firefighter pay raises in comparable communities in recent years have varied substantially but, on average, have trended down noticeably during 2010-2011-2012. Looking at the Village's comparable communities, in 2010-2011 among the eight units for

which data are available, top step firefighter/ paramedic salaries increased by a range of zero percent to 4.5 percent (VX 53). I calculate that the average increase across these eight units for which data are available was 2.5 percent (VX 53). During 2011-2012 among the nine units for which data are available, top step firefighter/ paramedic salaries increased by a range of zero percent to 3.93 percent, and the Village calculated that the average increase across these nine units was 1.63 percent (VX 53). During 2012-2013 among the four units for which data are available, top step firefighter/ paramedic salaries increased by a range of zero percent to 3.0 percent, and the Village calculated that the average increase across these four units was 1.70 percent (VX 53). There are only two external comparables for which 2013 salary data are available; the average raise in these two communities (Arlington Heights and Palatine) is 2.5 percent (as calculated by the Village), but this 2013 salary increase sample is so small it deserves little weight.

The Union performed a similar percentage pay increase analysis among its comparables. The Union's results show that from 2009 to 2010 the average percentage increase for top step firefighter-paramedics across its seven comparables was 2.97 percent; that the average increase from 2010 to 2011 for the seven comparables was 2.36 percent; that the average percent increase from 2011 to 2012 across the four communities for which data are available was 1.38 percent; and that the average percent increase from 2012 to 2013 across the two communities for which data are available was 3.03 percent (UX 6-T13). Both the Village

and Union analyses show the same thing – that over time the size of average percentage wage increase among both parties' comparables has declined substantially.

As these 2010-2011-2012 percentage pay increase comparisons indicate, (1) average percentage pay increases in comparable communities have been significantly trending down during the past three years, and (2) the average percentage increase in these units during this three-year period is far more consistent with the Village's two percent-per-year salary offer than with the Union's offer of a three-year salary increase totaling 14.08 percent (or an average increase of 4.69 percent per year). As a result, the percentage pay increase trend among the parties' comparable communities provides much more support the Village's offer than for the Union's offer.

When we pull together the results of the dollar salary analysis with the percentage pay increase analysis among the parties' comparable communities, the two sets of results produce contradictory conclusions. The annual top step salary analyses support the selection of the Union's offer, and the percentage pay increase analyses support the selection of the Village's offer. As a result, the external comparability evidence is mixed and provides moderate support to each party's offer.

Looking next at the *cost of living* evidence under Section 14(h)(5), the Union points out that the federal government's Consumer Price Index ("CPI") increased by a total of 6.8 percent during the period April 2009 through April 2012 (this percentage amount is drawn from the CPI-U results for the Chicago metro

area; UX 6-T30). For its part the Village notes that the four-year combined increase in the CPI-U for the Chicago area during the period May 2008 through May 2012 is 3.47 percent (VX 19).

I believe that COL increases that occurred during the expired CBA should be compared with the salary increases in that prior CBA, and I emphasize that those salary increases are not being determined in this proceeding. Accordingly, I am not willing to use in this analysis the parties' CPI data that covers part or all of the life of the expired CBA (JX 1). Instead, in this proceeding, the COL data that are pertinent and useful are those that come from the period, or part of the period, when the successor CBA will be in effect (May 1, 2011 through April 30, 2014). In addition, the most useful CPI data are those that come from the Chicago metropolitan area, for that is the geographic area where unit members live, work, and spend their money. The CPI-U data in VX 19 allow us to calculate the CPI-U increase for the Chicago area during the period May 2011 through April 2012 (the first year of the successor CBA). This CPI-U increase was 1.0 percent (VX 19), and the CPI-W increase for the Chicago metro area for this same time period was 0.84 percent (VX 21).

VX 22 presents summary results of predictions by various organizations for COL increases during the calendar year 2013. The Village says it is noteworthy that these 2013 predictions are in the 1.5 - 2.0 percent range (VX 22). The Village argues that this predicted rate of inflation is consistent with the very moderate rate of inflation for the May 2011-April 2012 period, and lends additional support to the selection of its salary

offer. Although I do not ascribe much weight to economic predictions, I note that the 2013 inflation forecasts are consistently moderate across all of the several forecasting sources listed in VX 22.

Based on the moderate COL increase during the first contract year, and on the likelihood that the COL increase during 2013 may continue to be moderate, I find that the Village's offer of a six percent salary increase covering this first year and the next two contract years will be sufficient to increase employee salaries commensurately with COL increases during the life of the successor CBA. At the same time, I find that it is highly unlikely that the CPI will increase by 14 percent, or anything close to that amount, during the three-year term of this contract, which is the total three-year salary increase proposed by the Union. Accordingly, I find that the COL data provide much more support for the Village's salary offer than for the Union's offer.

We now come to the *ability to pay* evidence under Section 14(h)(3). The Village argues that it faced dire financial straits during the term of the prior CBA and the early years of the period when the successor CBA will be in effect. The Village presented a large volume of evidence showing the decline in revenues it experienced during this period and the millions of dollars in cuts and other cost savings it needed to implement to keep the Village on sound financial footing (VXs 101-105). During the 2008-2012 years, dozens of positions were frozen and left unfilled. Some of these positions later were eliminated

altogether. During the 2009-2010 year the Village froze two firefighter/paramedic positions (VX 101). Employee salaries and benefits are paid from the General Fund, and during the 2008-2009 and 2009-2010 years General Fund expenditures exceeded revenues by several million dollars each year (VX 102). To cope with expenditures exceeding revenues, the Village adopted a property tax levy in late 2009 (VX 102). The fact that the Village's financial situation has improved during 2011 and 2012 is a direct result of the Village's reduced expenditures and increased revenues. In light of the Village's difficult fiscal circumstances during the pendency of the instant negotiations and arbitration, the Village argues that I must give significant weight to the "the interest and welfare of the public and the financial ability of the unit of government to meet those costs" pursuant to Section 14(h)(3).

For its part, the Union says the Village can easily afford the Union's wage proposal. In its 2011 *Annual Financial Report,* the Village noted that it began to see improvement in its financial status starting in January 2010 (UX 8-T9/vi). On April 30, 2011, Village records showed the Village had a General Fund balance of $29,935,420, almost all of it classified as unreserved. The General Fund surplus as of April 30, 2011 was $7.4 million (UX 8-T9/iii/11; Tr. 444). The Union notes that the Village predicted an $11 million General Fund Surplus for April 30, 2012 (Un.Br. 43; UX 8-T9/iii; VX 104 at 11). As the Village's own financial figures demonstrate, the Union says the Village is in very strong fiscal shape.

The Union emphasizes that the Village is certainly in a strong enough financial condition to be able to afford the difference in cost between the Union's salary offer and the Village's salary offer. The Union, after subtracting cost increases attributable to the status quo with no wage increases (primarily movement through the salary schedule steps), calculates the three-year cost of its salary offer at $29,272,194, the three-year cost of the Village's salary offer at $27,937,074, which is a three-year cost difference of $1,335,120 (Un.Br. 45-46; UX 6-T27-T29). In light of these very large Village's General Fund surpluses, the Union insists the Village can easily afford to pay for the Union's wage offer.

The Village has made no claim of an absolute inability to pay (Tr. 282). However, the Village notes that during the recent recession it experienced significant declines in revenues and it cut millions in expenses during 2008-2012 to keep its costs in line with its reduced revenues. These cuts included the elimination of dozens of positions throughout Village government, all by attrition (VX 105; Tr. 302). Part of the Village's cost savings were generated by zero percent wage increases for the 2010-2011 year in the instant unit, the fire command unit, and the Local 150 bargaining unit (JX 1; VXs 49, 56). With its recent revenue history and cost-cutting history, the Village argues it needs to keep cost increases down to reasonable levels.

In sum, the evidence about the "interests and welfare of the public and the financial ability of government to meet those costs" presents a mixed picture. The Union correctly notes that

the Village's finances are currently in strong shape. At the same time, the Village correctly notes that during the 2008-2010 period it went through some fiscally stringent times, and that the only reason the Village is in good financial shape now is that it did a vigorous and diligent job of increasing revenues, decreasing expenditures, and increasing its reserves. Yes, the Village now has a much improved ability to pay. Yes, the Village now can afford to pay for either of the salary final offers in the record. However, does it automatically follow that the Village is obligated to pay the Union's higher-than-the-comparables and expensive salary offer because it adeptly improved its finances since 2010? As this suggests, the ability to pay evidence is mixed and can be used to support either salary offer.

Pulling the parts of this salary analysis together, the results show (1) the parties' Variance Agreement does not "entitle" the Union to have its salary offer selected; (2) the internal comparability evidence provides strong support for the Village's offer; (3) the external comparability evidence is mixed, for some of it (the decline in this unit's standing in the top step salary rankings since 2009) supports the Union's offer, and some of it (the strongly downward trend in percentage salary increases among both parties' comparable communities) supports the Village's offer; (4) the cost of living evidence supports the Village's offer; and (5) the ability to pay evidence is mixed – the fiscal stringency faced by the Village during the 2008-2010 period was vigorously and adeptly handled, and this stringency

has made the Village understandably cautious about future expenditure commitments, both of which support the Village's offer, but the strength of the current Village finances in 2012 and predicted for 2013 support the Union's offer. In its totality, the salary increase evidence is mixed, and generally provides more support for the selection of the Village's offer than for the Union's offer.

Finding. I find, for the reasons explained above, that the Village's three-year salary final offer more nearly complies with the applicable Section 14(h) decision factors than does the Union's three-year wage final offer. Accordingly, I select the Village's final offer to resolve the salary issue.

I note that both parties' salary offers agree that retroactive wages shall be paid on a pro-rata basis to those former unit members who left the payroll on or after May 1, 2011, with such payments covering the period from May 1, 2011 until the former employee's last day of employment (JXs 5, 6).

The Village has promised that unit members will receive their retroactive pay "as soon as reasonably practicable after the issuance of the award" (Tr. 506-507). The Union accepted the Village's assurances (Tr. 508-509), as reflected in item 7 of "The Parties' Stipulations" in the Union's Brief (Un.Br. 10).

3. **Longevity Pay (Section 8.2)**

The parties' expiring CBA contains a section that provides longevity payments to unit members. These payments are paid according to a graduated schedule based on length of continuous

service: $450 each year after five years of service; $600 each year after ten years of service, $900 each year after 15 years of service, $1,200 each year after 20 years of service, and $1,500 each year after 25 years of service (JX 1, p. 23). These longevity amounts are not cumulative.

Village Proposal. The District proposes to change the longevity pay arrangement by deleting Section 8.2, and thereby eliminating longevity pay, for all unit members hired after the issuance date of the instant award, via a revised Section 8.2, as follows (proposed new language, in this and other proposals, is underlined):

> Section 8.2. Longevity Pay. Employees on the active payroll as of the date Arbitrator Feuille issues his interest arbitration award with continuous unbroken service with the Village in a position covered by this Agreement shall receive longevity pay in accordance with the following schedule:
>
> . . . .
>
> Employees hired after the date Arbitrator Feuille issues his interest arbitration award are not eligible for longevity pay. (JX 6)

The Village supports its proposal primarily with internal comparability evidence pursuant to Section 14(h)(4). On this dimension, the Village notes that the current (2012-2015) CBA between the Village and the Fire Command Association has a longevity pay provision, but the longevity pay amounts it contains are paid only to unit members who were on the Village's active payroll as of May 1, 2001 (VX 64). Fire command unit members who were not on the Village's active payroll as of that date are not eligible for longevity pay (VX 64). Similarly, the Village notes that the current (2010-2013) CBA between the

Village and the International Union of Operating Engineers Local 150 contains a longevity pay provision, but the longevity pay amounts it contains are paid only to unit members who were hired by the Village prior to May 1, 2000 (VX 65). In addition, the Village Board of Trustees adopted a motion on July 25, 2000 that longevity pay would not be provided to nonrepresented employees hired after May 1, 2000 (VX 66).

The Village points out that longevity pay is an expensive labor cost item over and above salary costs, and that it has been seeking to eliminate longevity pay for the past dozen years. This elimination has been accomplished in two other Village bargaining units and with the Village's nonrepresented employees (VXs 64, 65, 66). The Village argues that, for internal equity reasons, this elimination should occur in the instant unit as well.

Union Proposal. The Union proposes that the longevity pay status quo continue unchanged into the successor CBA.

The Union says the Village has advanced no persuasive reason to create a two-tier longevity pay system that over time will result in the elimination of longevity pay. On the bargaining and arbitration history dimensions, the firefighters' CBAs have contained the instant longevity pay provision continuously through six different CBAs covering a total of 19 years since 1993 (UX 3-T2-6; JX 1). The Union notes that this history includes an unsuccessful attempt by the Village to persuade an interest arbitrator to adopt its longevity pay proposal in this unit. Specifically, in 2004 the Village presented to Arbitrator

Robert McCallister the same proposal as it has presented here, and McCallister rejected the Village's proposal (UX 2-T5). The Village has not shown that this longevity pay provision has created any problem for the Village at any time during that 19-year period. In other words, the Union says that this lengthy bargaining and arbitration history evidence under Section 14(h)(8) provides very strong support for the retention of the longevity pay provision.

In addition, the Union notes that the Village's rank-and-file police officers have the identical longevity pay provision in their current 2008-13 CBA (UX 1-T2, p. 50). Similarly, the police command 2010-2012 CBA contains the same longevity provision as the provision covering the police rank-and-file unit (UX 1-T4, App. A). In addition, the Union notes that the Village sought to eliminate longevity pay from the police rank-and-file CBA in 2003 before Arbitrator James Cox (UX 2-T4), and also to eliminate longevity pay from the police command CBA in 2002 before Arbitrator Steven Briggs (UX 2-T3). Both such attempts were unsuccessful. The Union says this internal comparability evidence supports the Union's offer and highlights the fact that the Village has advanced no persuasive rationale for why Village firefighters should have longevity pay taken away from them while Village police personnel continue to receive this monetary benefit.

Looking externally, the Union notes that all of its external comparable communities provide longevity pay to their firefighters (UX 5-T1-T7). The Union notes that the Village's

external comparability evidence shows that eight of the Village's nine comparables also provide longevity pay (VX 55).

In sum, the Union points out that the bargaining and arbitration history (Section 14(h)(8)), internal comparability (Section 14(h)(4)), and external comparability (Section 14(h)(4)) evidence provide strong support for the retention of the longevity pay provision and thus for the selection of the Union's offer. For these reasons, the Union says its longevity pay offer should be selected.

Analysis. When we compare the evidence supporting these two longevity pay final offers, the significantly greater weight of this evidence supports the Union's offer to retain the longevity pay provision unchanged in the successor CBA. This provision's continued existence is supported by the fact that it has been a feature of the parties' CBAs for almost 20 years (UX 3-T2-T6; JX 1); by the fact that the CBAs covering both Village police bargaining units continue to contain it (UX 1-T2, UX 1-T3); and by the fact that all but one of the combined comparable communities offered by the parties provide longevity pay to their firefighters (VX 55; UX 5-T1-T7).

In addition, in two prior interest arbitrations between the Village and its two rank-and-file public safety units, the Village proposed the adoption of a two-tier longevity pay system essentially identical to the Village's longevity pay proposal in this proceeding, and the two arbitrators who received this Village proposal each rejected it: Arbitrator James Cox rejected it in his February 2003 interest award between the Village and

the Metropolitan Alliance of Police Chapter 195 (the rank-and-file police unit; UX 2-T4); and Arbitrator Robert McCallister rejected it in his January 2004 interest award between the instant parties (UX 2-T5).

Moreover, the Village has not advanced any persuasive evidence to demonstrate that longevity pay has created any problems for the Village.

Finding. I find, for the reasons explained above, that the Union's longevity pay offer more nearly complies with the applicable Section 14(h) decision factors – internal comparability, external comparability, bargaining and arbitration history – than does the District's longevity pay offer. Accordingly, I select the Union's final offer to resolve the longevity pay issue.

4. Quartermaster System and Maintenance Allowance (Section 15.4)

Section 15.4 provides that the parties' "quartermaster system" shall continue for the life of the expiring contract. The quartermaster system involves the Village selecting a uniform vendor, and then unit members obtaining their prescribed uniforms and related equipment from that vendor. Section 15.4 also provides that the Village will provide each unit member with a $425 maintenance allowance each year. The language in Section 15.4 does not list each of the items that will be supplied to unit members pursuant to the quartermaster system.

Union Proposal. The Union proposes to add two items to the approved uniform items that the Village will provide to each unit

member through the quartermaster system: two polo-style shirts and one baseball-style cap (hereafter "polo shirts" and "baseball cap"). The Union proposes that Section 15.4 be modified to read:

"**Section 15.4. Quartermaster System and Maintenance Allowance.** The quartermaster system with respect to the provision of uniforms and related equipment shall continue for the term of this Agreement. As part of the quartermaster system, the Village shall supply, from the Village's selected vendor, baseball caps and polo shirts as set forth on Appendix G attached to this Agreement (or such items of substantially similar style and material). Employees shall receive an annual maintenance allowance of $425 for each calendar year of this Agreement (prorated for employees employed less than 12 months). Said allowance shall be paid on the first payday in June of each year."

"APPPENDIX G
SECTION 15.4 – ADDITIONAL QUARTERMASTER SYSTEM ITEMS

Description
VERTX POLO SHIRT DARK NAVY WITH COLDBLACK TECHNOLOGY AND SCHAUMBURG FIRE DEPARTMENT APPROPRIATE IDENTIFICATIONS

FLEXFIT BASEBALL CAP/POLYESTER AND WOOL WITH SCHAUMBURG FIRE DEPARTMENT APPROPRIATE IDENTIFICATION" (JX 5)

The Union supports its proposal by examining selected existing uniform shortcomings and pointing out how its proposed items will provide better uniforms for unit members during hot and sunny weather. The Union points out that unit members currently are furnished with only two items of headgear: a billed, hard-shelled turnout helmet to be worn when working at fire scenes, and a woolen watch cap that closely fits the wearer's head when performing other duties. The Union says the turnout helmet is a limited purpose item that is not suited for many of the daily tasks firefighters perform, such as cleaning their equipment and stations, for it is designed to protect the wearer's head from harm when working at fire scenes. The watch cap is good for wearing in cold weather, for its fabric and fit

keep the wearer's head warm. However, as these descriptions indicate, when unit members are performing duties in warm or hot weather, especially when they are working outdoors, they have no useful headgear that will protect their heads/faces from the sun and allow the wearer's head to remain cool.

Additionally, unit members are furnished with only one type of shirt for everyday wear, and it is a thick fabric 65% polyester–35% cotton uniformed shirt with short sleeves, a collar, and a button front (i.e., part of the Class B uniform; Tr. 152; UX 8–T1). The Union says that this shirt does not "breathe," and as a result wearing it outdoors in warm weather can be uncomfortable.

Accordingly, the Union proposes the addition of two items to be added to the list of uniform items to be supplied to unit members by the Village: a dark navy baseball–style cap with appropriate Department identification, and a dark navy, collared, polo–style "coldblack technology" shirt with appropriate Department identification (JX 5). The Union emphasizes that its proposed coldblack technology shirts are made of a fabric that is designed "breathe" and thus to keep wearers cool in warm/hot weather. Similarly, baseball caps provide much better protection from the sun, and also enable wearers to stay cooler, compared with the wool watch caps in warm/hot weather. Functionally, the Union emphasizes that these two clothing items fill in the existing deficiency in the Department's approved uniforms to be worn during warm/hot weather. (I note that the Union's proposal does not call for baseball caps in the literal sense of a front–

billed cap with a baseball team's logo on it, but instead a front-billed cap with a Departmental logo on it (JX 5)).

The Union presents a variety of evidence to support its proposal. Looking at internal comparables under Section 14(h)(4), the Union points out that the Village's police officers are allowed to wear baseball caps when they are performing patrol duties (Tr. 337). Turning to external comparables under Section 14(h)(4), the Union notes that firefighters in Des Plaines, Elgin, and Elk Grove Village are allowed to wear baseball caps and polo shirts; Hoffman Estates allows the wearing of T-shirts and baseball caps; and in Mount Prospect, firefighters are allowed to wear T-shirts and baseball caps whenever the heat index is above 87 degrees (UX 8-T5). In sum, five of the Union's seven comparable communities permit fire personnel to wear warm weather shirts and baseball caps. The Union says that the widespread use of polo shirts or T-shirts and baseball caps in comparable communities indicates that these communities do not believe that such at-work attire creates an unprofessional image or is otherwise inappropriate when firefighters are at work.

Village Proposal. The Village proposes that the quartermaster system provision in Section 15.4 continue unchanged into the successor contract.

The Village bases its proposal on the fact that the Fire Department is a professional paramilitary organization, and it should appear as such to the citizens it serves. As indicated in Fire Chief David Schumann's testimony, the Village's objections to the Union's proposal are based on the fact that the Village,

and particularly Chief Schumann, believe that a baseball cap and especially a polo or "golf shirt" do not "present a professional paramilitary image of this department to the community" (Tr. 337). The Chief also testified that the existing Class B uniform shirt presents a much more professional paramilitary image than does the proposed golf shirt. The Chief testified that he does not object to the material used in such shirts, nor does he object to their cost (Tr. 339).

On the medical condition dimension, Chief Schumann testified that any Fire Department employee who needs to wear a baseball cap for medical reasons would be permitted to do so, as just seen by the fact that shortly before the instant hearing the Department approved the wearing of a baseball cap by a Department member as a reasonable accommodation to the member's skin condition (Tr. 339).

Analysis. Looking first at external comparability evidence under Section 14(h)(4), it is necessary to differentiate between comparable communities that "provide" baseball-style caps and polo shirts to their firefighters and those that "allow" their firefighters to wear these items. According to the Union, here are the specifics of what its seven comparables do on the cap and polo shirt issue:

Arlington Heights – "Short-sleeve summer shirts provided (in addition to other items)"

Des Plaines – "Polo shirts and baseball caps have been approved by administration"

Elgin – ". . . Summer style shirts and short sleeve shirts provided per CBA . . . T-shirts, polo shirts, shorts and baseball caps are allowed (enacted as policy, not yet in CBA)"

Elk Grove Village – “Polo shirts, baseball caps permitted”

Hoffman Estates – “Short-sleeve shirts provided . . . T-shirts permitted, other than during public events, etc.; baseball caps permitted”

Mount Prospect – ““From June-September and whenever heat index is above 87 degrees, embroidered Department t-shirts are worn, baseball caps are provided”

Palatine – “Quartermaster system – reference to PFD Rule and Regulations, Section 715” (UX 8-T5)

As noted above, the Union’s proposal calls for the Village to “provide” baseball caps and polo shirts to unit members (JX 5). Also as noted above, the Village’s main objection to the Union’s proposal is Fire Chief Schumann’s belief that wearing these two items would detract from the professional paramilitary appearance and image of the Department (Tr. 337). The Chief testified that he does not object to this proposal based on its cost (Tr. 339). In light of the Village’s rationale opposing this Union proposal, we may group together those comparables that “provide” and those comparables that “permit” the wearing of caps and polo shirts, as both practices would affect the public image of firefighting personnel in the relevant comparable communities. When we do this, we see that the Union’s external comparability evidence shows the following: five communities support the wearing of polo shirts and baseball caps (Des Plaines, Elgin, Elk Grove Village, Hoffman Estates, and Mount Prospect), one community does not (Arlington Heights), and we have too little information about Palatine to know what Palatine’s practice is (UX 8-T5). As a result, the external comparability evidence supports the Union’s proposal. This fairly widespread practice

of allowing the wearing of caps and polo shirts (or T-shirts in some cases) indicates that most of the Union's comparable communities do not seem to believe that the wearing of caps and polo shirts detract from the professional image and appearance of their fire department employees.

Turning to the internal comparability evidence under Section 14(h)(4), the rank-and-file Schaumburg police officers who perform patrol duties are allowed to wear baseball caps while on patrol (Tr. 337). As with many of the fire departments in comparable communities, the Schaumburg Police Department also does not seem to believe that the wearing of baseball caps detracts from the professional paramilitary image of the SPD.

I find that the Village's objection to this Union proposal is based on its good-faith belief that these two apparel items are inconsistent with the professional paramilitary image that its Fire Department personnel should convey. As the chief operating officer of the Department, Chief Schumann's perspective and preference deserve significant weight. However, the widespread use of baseball caps and polo shirts in several comparable fire departments, plus the use of baseball caps by police patrol officers in the SPD, deserve greater weight under the Section 14(h)(4) comparability factor. As a result, the Section 14(h)(4) external and internal comparability evidence about the wearing of caps and polo shirts deserves considerably more weight than does the Village's objection to the Union proposal based on the Village's good-faith belief that the

adoption of the Union proposal will detract from the Department's professional image.

Finding. I find, for the reasons explained above, that the Union's quartermaster system proposal more nearly complies with the applicable Section 14(h) decision factors – internal comparability and external comparability – than does the Village's quartermaster system proposal. Accordingly, I select the Union's final offer to resolve the quartermaster system and maintenance allowance issue.

5. Purge of Personnel File (Section 4.11 – NEW)

On this noneconomic issue, the parties' expiring contract says nothing about the removal of prior discipline from employee personnel files. Specifically, Article IV contains the parties' grievance procedure; Section 4.8 specifies that discipline consists of the following penalties: oral reprimand, written reprimand, suspension, and discharge; and Section 4.9 says that oral and written reprimands may be grieved but any reprimand grievance is not arbitrable (JX 1). There is no language anywhere in Article IV that addresses removing reprimands from an employee's personnel file after the passage of time.

Union Proposal. The Union proposes that the following new section and language be added to Article IV:

"**Section 4.11 Purge of Personnel File**. An employee may request that a written reprimand be removed from the employee's record if, from the date of the last reprimand, twelve (12) months have passed without the employee receiving an additional written reprimand for the same or similar offense or a suspension without pay. If the employee does not so request, it shall be deemed removed."

The Union bases its proposal on comparability evidence. On the external comparability dimension, the CBAs covering rank-and-file firefighter units in Elgin and Palatine specify that oral and written reprimands shall not be used after the passage of designated amounts of time and these reprimands shall be removed from an employee's personnel file (in Elgin after 12 months for both oral and written reprimands; in Palatine, 12 months after an oral reprimand and 24 months after a written reprimand; UX 8-T6). In Arlington Heights and Hoffman Estates there is contract language that permits employees to place in their files written responses to adverse materials (UX 8-T6). However, these employee-response provisions will not be considered further, as these employee-response provisions are not at all similar to proposals to remove reprimands from employee personnel files after a specified period of time.

Turning to internal comparability, the Union says its proposal is tailored to be similar to the "Purge of Personnel File" language adopted in the current (2008-2013) police rank-and-file contract between the Village and MAP Chapter 195 (UX 1-T2). In this police CBA, a police officer has the right to request that a written reprimand issued at least 12 months earlier be removed from his/her personnel file if the officer has not received another written reprimand or a suspension during that 12-month period. In addition, this police contract provision also says that if an officer does not request that a reprimand be removed, "it shall be deemed to be removed" (UX 1-T2, p. 16).

Village Proposal. The Village proposes a different personnel file reprimand removal provision, as follows:

> Section 4.11. Purge of Oral Reprimands. An employee may request that an oral reprimand that has been noted in his/her personnel file be removed if from the date of the last oral reprimand twelve (12) months have passed without the employee receiving an additional oral reprimand for the same or similar offense, a written reprimand, or a suspension without pay. (JX 6).

The Village supports its proposal by noting that only three of its comparable jurisdictions allow for the removal of reprimands from employee personnel files after the passage of designated amounts of time (Elgin, Palatine, Streamwood; VX 86). In addition, on the internal comparability dimension only the police rank-and-file CBA has a reprimand removal provision (Village Brief, page 69 ("V.Br. 69")). Further, the Village says the Union presented no evidence of any problems in the instant unit regarding the use of previously issued written reprimands in subsequent disciplinary cases. For these reasons, the Village argues that the evidence provides much more support for the selection of its offer than the Union's offer.

Analysis. In sum, the Union proposes that *written* reprimands will be removed from employees' files after 12 months, and the Union's proposal does not address oral reprimands. The Village proposes that only *oral* reprimands may be removed after the passage of 12 months, and the Village's proposal does not address the removal of written reprimands. In other words, both parties are willing to allow employees to have one type of reprimand removed from personnel files after 12 months if there has been no intervening discipline.

There is a significant inconsistency in the Union's proposal, and that is the absence of any mention of removing oral reprimands from personnel files. CBA Section 4.8 clearly implies that written reprimands constitute more serious discipline than oral reprimands. However, the Union's proposal calls only for the removal of written reprimands after 12 months but says absolutely nothing about oral reprimands. This silence about oral reprimands indicates that there is no expiration date on how long oral reprimands remain active in employee personnel files if the Union's proposal is adopted.

Another unusual feature of the Union's proposal is that the reprimand removal process is triggered by an employee request that a written reprimand be removed. However, in the very next sentence, the Union's proposed language says that the reprimand "shall be deemed removed" even if the employee does not so request. This is very puzzling language. If the removal depends on an employee's removal request, as stated in the first sentence of the Union's proposed Section 4.11, fine. But what is the point of making a reprimand removal dependent upon an employee request if in the next sentence the provision says the reprimand "shall be deemed removed" anyway if the employee does not so request? This "deemed removed" sentence implies that employees are somehow unable or unwilling to request the removal of a reprimand from their own personnel files. If the Union's goal here is to ensure the removal of the written reprimand, why is the proposal not written in the same type of mandatory removal

language as exists in the Palatine firefighters' contract (UX 8-T6, UX 5-T7)?

The Village's proposal avoids these kinds of inconsistencies by applying only to the removal of oral reprimands, which removals are conditional upon employee requests (i.e., there is no "shall be deemed to be removed" language in the Village's proposal). At the same time, the Village's proposed language suggests that written reprimands contain no expiration date on how long they remain active in employee personnel files.

Neither party's proposal is supported by the external comparability evidence. Among the Union's seven comparable communities, only two (Elgin and Palatine) have reprimand removal language in their firefighter CBAs (UX 8-T6). Among the Village's nine comparable communities, only three (Elgin, Palatine, and Streamwood) have reprimand removal language in their firefighter CBAs (VX 86). On the internal comparability dimension, across the Village's five bargaining units, the police rank-and-file CBA contains a written reprimand removal provision (UX 1-T2) but the CBAs in the Village's other bargaining units do not. This external and internal comparability evidence provide almost no justification for the adoption of any reprimand removal provision.

More significantly, neither party presented any evidence demonstrating any need for any sort of reprimand removal provision. In particular, there is no evidence that the absence of such a provision has caused any problems for either party.

Finding. I find, for the reasons explained above, that

neither party's offer "more nearly complies" with the applicable decision factors under Section 14(h). In particular, I find that none of the applicable Section 14(h) decision factors support the selection of either party's offer. Accordingly, using the non-economic issue decision authority granted to me by Section 14(g) of the Act, I have determined that no new Section 4.11 should be adopted (i.e., the Article 4 status quo shall continue unchanged).

6. Vacation Scheduling (Section 9.3)

Unit members pick their preferred vacation dates by shift based on their unit-wide seniority (JX 1), subject to the Village-prescribed maximum number of unit members who may be on vacation on any given day (which is currently set at four employees; Tr. 352-353). Station assignment is not used as a vacation selection criterion.

Village Proposal. The Village proposes to modify Section 9.3 to provide that employees will select their vacation dates via seniority, on a station by station basis, as follows:

> Section 9.3. Vacation Scheduling. Vacations shall be scheduled insofar as practicable at times most desired by each employee, with the determination of preference being made on the basis of an employee's seniority by station assignment. It is expressly understood that the right to set the maximum number of employees . . . . .
>
> The number of slots per shift shall be the same throughout the year . . . . Vacation days that have been banked (i.e., vacation days that have been accumulated in accordance with the provisions of Section 9.4 or not picked by seniority by station assignment during the initial opportunity to pick vacations) may be taken in any slot that is still open after all employees on the shift have made their initial pick based on seniority by station assignment.

When vacation days that were previously selected become open . . . ., such days shall be offered for selection by employees on the shift and assigned to the same station who are less senior than such employee in order of their seniority.

If an employee covered by this Agreement . . .” (JX 6)

As this proposal indicates, the vast majority of Section 9.3 will continue unchanged into the successor contract, with the only change being the selection of vacation time via seniority by station assignment as just noted.

The Village supports its offer as follows. The Village notes that the average amount of seniority among employees varies substantially across unit members at the Village’s five fire stations. For instance, the employees assigned to Station 51, across all three shifts, have an average of 11.0 years of service; the employees assigned to Station 55 have an average of 18.0 years of service; and the employees assigned to Stations 52, 53, and 54 fall in between these two poles on the average seniority scale (VX 88). The Village says that when vacation dates are selected on the basis of unit-wide seniority, the stations with the most senior employees often have two or more unit members scheduled for vacation on the same shift. In turn, this means that lower seniority employees from other stations must be “detailed out” (Tr. 468) to these other stations to cover the absences of the higher seniority employees. The Village wants to more evenly disperse vacation selections so that employee experience is more equally distributed across stations and to reduce the number of vacation-replacement details needed across the Department’s stations (V.Br. 73-74). The number of vacation-based details will be reduced under the Village’s

proposed vacation selection system, for this system will permit only one employee per station to be off on vacation on any given shift (Tr. 359-362).

Union Proposal. The Union proposes that the status quo with Section 9.3 continue unchanged into the successor contract.

The Union says that for as long as the parties have had a contractual picking procedure for selecting vacations (since 1993), they have used unit-wide seniority by shift across all stations, a method that has not been constrained by station assignment (Tr. 466). The Union notes that some higher seniority employees who are able to select desirable days off currently (e.g., Christmas Day) will no longer be able to use their seniority to obtain this vacation scheduling benefit. The Union says that the Village has presented no evidence that would justify the adoption of its proposed station assignment seniority method for vacation selection.

In addition, the Union notes that the Village proposal contains no start date when this new vacation selection method would take effect, nor has the Village entered any evidence regarding what month during each year unit members select their vacation days. During the instant negotiations immediately preceding this current arbitration proceeding, the parties agreed upon new language in Section 16.11 Shift/Station Selection Process, which is scheduled to take effect in June 2014 (UX 4-T13; see also the list of "tentative agreement provisions" later in this Award). Without knowing these particulars of the Village's proposal, it is impossible to know if the parties'

newly negotiated shift/station selection process will be negatively impacted.

Moreover, the Union points out that the external comparability evidence provides no support for the Village's proposal. Three of the Union's comparables use a pure seniority vacation selection method (Arlington Heights, Des Plaines, and Mount Prospect; UX 5-T1, T2, T6). The other four Union comparables use the same seniority-by-shift-selection method for vacation selection currently used in the instant unit to select vacations (Elgin, Elk Grove Village, Hoffman Estates, and Palatine; UX 5-T3, T4, T5, T7). The Union also notes that the two Village comparables not included in the Union's comparable list also support the status quo - Streamwood uses a pure seniority system, and Hanover Park uses the same seniority-by-shift vacation selection process the Village uses (VX 7).

For these reasons, the Union urges that its status quo proposal be adopted and no changes be made to the current vacation selection method.

Analysis. Perhaps the most visible conclusion emerging from the evidence on this issue is that there is no apparent indication in the record how or why the current selection by shift method for selecting vacation dates has caused problems for the Village. There is no "detailed out" data in the record to indicate how often particular stations operate with employees who have been detailed to these stations to serve as vacation replacements. The Village's evidence does not show that a detailed employee is paid any sort of pay premium, so the

detailing process does not generate a dollar cost. More important, there is no evidence of inadequate performance by unit members working in stations on days when multiple detailed personnel have been assigned to those stations. The Village is correct that the distribution of seniority across unit members by station is unequal, meaning that a larger number of higher seniority unit members could be on vacation from some stations than others on a given shift (VX 88). However, the Village has not presented any evidence that this uneven seniority distribution by station, and the number of detailed employees it causes, has resulted in any individual or station performance problems of any kind for the Department.

Further, the evidence indicates that employees select their shift/station/fire company, by seniority, every two years (Tr. 360-361). Chief Schumann testified that one of the reasons employees select particular shifts/stations/companies under the current system is to use their seniority to obtain their preferred vacation dates (Tr. 358-360). The Village's proposal would deny some of the highest seniority employees part of the vacation selection benefit they now have. I note that the Village has not offered a persuasive reason for why it needs to do this.

In addition, the Village proposal is incomplete. It contains no specific information about how the new shift/station selection process would operate, and it contains no date when the new system would replace the current shift/station selection method. As a result, there is a notable amount of uncertainty

about the actual working of the proposed new shift/station selection system in the Village's proposal.

Looking at the external comparability evidence under Section 14(h)(4), all of the comparable fire departments used by the parties select vacations either using a pure seniority system or else using seniority on a shift-by-shift basis (UX 5). This external evidence provides very strong support for the Union's offer and no support for the Village's offer.

When all of the evidence on this issue is pulled together, it indicates that there is no evidence showing that the current seniority-by-shift vacation selection system has created any performance problems in the Department. As a result, there is no persuasive need to adopt the new station-specific vacation selection method proposed by the Village.

Finding. I find, for the reasons explained above, that the Union's vacation scheduling offer more nearly complies with the applicable Section 14(h) decision factors than does the Village's vacation scheduling offer. Accordingly, I select the Union's final offer to resolve the vacation scheduling issue.

7. Drug and Alcohol Testing (Article XXII)

Article XXII currently provides that unit members may be tested for drugs or alcohol use when there is reasonable suspicion to do so. There is no mention of random testing in Article XXII (JX 1).

Village Proposal. The Village proposes to add random testing for drug or alcohol use to Article XXII in addition to

the reasonable suspicion testing already contained in this article, as follows:

"The Village may require an employee to submit to urine and/or blood tests if the Village determines there is reasonable suspicion for such testing, and provides the employee with the basis for such suspicion in writing at or about the time the test is administered. If the written basis is not provided prior to the actual test, a verbal statement of the basis will be provided prior to administering the test. In addition, effective January 1, 2013, the Village may conduct random drug and alcohol testing up to four times per calendar year. The total number of such random tests shall not exceed 25% of the total number of sworn bargaining unit members. If the Village exercises its right to conduct such random tests, the group from which employees will be selected randomly will include all sworn bargaining unit employees, plus the Fire Chief and Deputy Fire Chiefs. The selection of employees to be randomly tested shall be provided by the outside contractor that the Village uses to randomly select the employees who are to be tested" (JX 6).

The Village supports its offer by noting that the constitutionality of random drug and alcohol testing for public employees, especially those working in safety-sensitive positions, has been upheld by the courts (VXs 93, 94). The Village also says there is considerable evidence that drug and alcohol testing is an effective employer method for combating the use of drugs and alcohol by employees (VX 95).

Closer to home, the Village points out that its proposal seeks essentially the same random testing provision in the parties' successor CBA as already exists in (a) 2012-2015 CBA between the Village and the Schaumburg Fire Command Association (VX 96); (b) the 2008-2013 CBA between the Village and the MAP Chapter 195 covering the police rank-and-file unit (UX 1-T2); and (c) the 2010-2012 CBA between the Village and the MAP Schaumburg Command Officers Chapter 219 (UX 1-T4). The Village points out that all of the Village's public safety personnel are now covered

by random testing language but for the members of the instant unit, and for reasons of internal equity the instant unit should also be covered by the same random testing language. The Village says that, in light of the highly safety-sensitive nature of firefighting and police positions, all of the Village's public safety employees should be covered by a reasonable random testing provision. This need is enhanced in this unit by the fact that all of the Department's emergency medical services vehicles carry the controlled substances of versed (an anti-anxiety drug) and fentanyl (an anesthetic similar to morphine; VX 99), and by the fact that in this unit a former unit member in 2008 was caught using cocaine (VXs 97-98).

The Village also notes that its proposal does not single out the rank-and-file firefighters for such testing. Instead, the Village's proposal explicitly includes random testing for the Fire Chief and the Department's Deputy Chiefs (JX 6).

Union Proposal. The Union proposes that Article XXII continue unchanged into the successor CBA (JX 5).

Looking at its external comparables, the Union says that none of these seven municipalities have a random drug testing provision in their CBAs with firefighters (UX 8-T7). The Union also argues that its external comparability evidence pulled from other fire departments deserves more weight than the Village's internal comparability evidence, the majority of which comes from the Village's Police Department.

Turning to the relevant bargaining history, the Union points out that the Village has previously raised the random drug and

alcohol testing issue in prior negotiations, been unable to obtain the Union's agreement to such language, and taken the issue to interest arbitration. The Village has done the same thing with the police rank-and-file unit. At interest arbitration, every one of the Village's proposals on this issue was rejected by the interest arbitrators handling these cases. In his February 23, 1998 award, Arbitrator Steven Briggs rejected the Village's proposal to institute random drug and alcohol testing in the instant unit (UX 2-T2); and in his January 28, 2004 award Arbitrator Robert McAllister rejected the Village's proposal to institute random drug and alcohol testing in this unit (UX 2-T5). Similarly, in the police rank-and-file unit, Arbitrator James Cox rejected the Village's proposal for random testing in his February 8, 2003 award (UX 2-T4); and in his April 14, 2007 award Arbitrator Thomas Yaeger rejected the Village's proposal for random drug testing in the police unit (UX 2-T6).

The Union acknowledges that the other three Village public safety bargaining units (fire command, police command, and police rank-and-file) now have random drug testing provisions in their CBAs (UX 8-T7). The Union emphasizes, however, that these three random testing provisions were negotiated into these contracts by the mutual agreement of the parties, not imposed by interest arbitrators over the objection of one party. The Union argues that the adoption of new contractual provisions should be accomplished by mutual agreement at the negotiating table rather than be imposed by outsiders over the objection of one party. The Union says the Village is seeking to use the instant

proceeding to obtain a new provision it could not obtain in bargaining.

In addition, the Union notes that the Village has presented absolutely no evidence of any need for a random testing provision to be adopted in this unit's contract. Chief Schumann testified that during the period of time that the reasonable suspicion language has been in the fire rank-and-file contract, neither he nor any of his command staff ever had reasonable suspicion to believe that any employee needed to be sent for drug or alcohol testing (Tr. 483-484). The Union notes the parties' firefighter contracts have had a reasonable suspicion testing provision continuously since 1993 (UX 3; JX 1), and during that almost-20 year period the reasonable suspicion requirement has never been invoked. The Union says that Chief Schumann's testimony clearly establishes that there is no need to adopt a random testing provision.

Analysis. The external comparability evidence strongly supports the Union's drug testing offer. The bargaining history evidence supports the Union's drug testing offer. The interest arbitration history evidence supports the Union's drug testing offer. The historical evidence about the non-use of reasonable suspicion drug testing in this unit supports the Union's offer. The internal comparability evidence is mixed. The Village's three other public safety units have random testing provisions in their CBAs, which internal comparability evidence supports the Village's offer. At the same time, the bargaining and arbitration history evidence regarding the adoption of the random

testing provisions in these three Village contracts supports the Union's offer, in that these random testing provisions were negotiated into these three CBAs and not imposed by interest arbitrators over one party's objections. Together this evidence provides more support for the Union's offer than for the Village's offer.

Finding. I find, for the reasons explained above, that the Union's drug and alcohol testing offer more nearly complies with the applicable Section 14(h) decision factors than does the Village's drug and alcohol testing offer. Accordingly, I select the Union's final offer to resolve the drug and alcohol testing issue.

Tentative Agreement Provisions

During their negotiations and the pendency of the instant arbitration proceeding, the parties resolved many issues via the tentative agreement ("TA") process. The TAs listed below are contained in UX 4-T13, and the specific changes in these TA'd provisions can be found there. These TA'd issues include the following:

Section 3.1 Generally
Section 4.7 Miscellaneous
Section 4.8 Discipline
Section 6.4 Seniority List
Section 7.2 Normal Work Cycle
Section 7.3A Day Trades
Section 7.4 Overtime

Section 7.5 Changing or Trading Tours of Duty

Section 9.6 Vacation Day Trades

Section 10.3 Pay for Hire backs on Holidays

Section 11.1 Cafeteria Benefits Plan

Section 11.3 Flexible Benefits Plan

Section 12.4 Bereavement Leave

Section 16.11 Shift/Station Selection Process

Article XIX, Sections 19.1 – 19.11, Promotions

If I have omitted any TAs from the above list, such omission is strictly inadvertent and shall be rectified by the parties via reference to their TA documentation.

All of the parties' TA'd issues are hereby incorporated into this Award by reference.

Status Quo Provisions

In addition, the parties agreed that all the provisions in the expiring CBA that were not changed in negotiations, that are not resolved via the instant Award, and were not changed via the TA process discussed above, will carry forward unchanged into the successor CBA as "status quo" items. This includes items that may have been on the bargaining and/or arbitral agenda but were dropped or withdrawn by one or the other party either prior to or during the instant proceeding. I hereby incorporate into this Award all of these status quo provisions by reference.

ILRB-Pending Issues

This confirms the parties' parties mutual agreement that I will retain jurisdiction over the four issues being submitted to the Illinois Labor Relations Board for declaratory rulings, and that, if necessary, I will issue arbitral ruling(s) as needed to resolve any of these issues that the parties are unable to resolve directly.

V. AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the following outcomes more nearly comply with the applicable decision factors prescribed in Section 14(h) of the Act. Accordingly, I select and award these outcomes on the issues on the arbitral agenda:

A. ECONOMIC ISSUES

1. Term of Agreement (Article XXIII, Section 23.1)

   The Village's offer is selected.

2. Salaries (Article VIII, Section 8.1)

   The Village's offer is selected.

3. Longevity Pay (Article VIII, Section 8.2)

   The Union's offer is selected.

4. Quartermaster System and Maintenance Allowance

   The Union's offer is selected.

B. NON-ECONOMIC ISSUES

5. Purge of Personnel File

   The Arbitrator's *status quo* offer is selected.

6. Vacation Scheduling

   The Union's offer is selected.

7. Drug and Alcohol Testing (Article XXII)

   The Union's offer is selected.

The "Tentative Agreement Provisions" and the "Status Quo Provisions" described above are hereby incorporated into this Award by reference.

This Award confirms my retention of jurisdiction over the four ILRB-pending issues on which the parties are seeking declaratory rulings in case it is necessary for me to resolve any of those issues via arbitral determination.

It is so ordered.

Respectfully submitted,

Champaign, IL
November 2, 2012

Peter Feuille
Arbitrator